

1 is a public service announcement and that would be the type  
2 of programming under which it falls. That was a  
3 classification in my analysis,

4 Q In determining whether a particular item was a  
5 public service announcement, did you rely upon the logs or  
6 did you rely upon the quarterly reports or did you rely upon  
7 some mixture of the two?

8 A The logs.

9 Q So you specifically excluded public service  
10 announcements from your computation of what was public  
11 service programming aired by WTVE during the license term,  
12 is that correct?

13 A Yes.

14 Q I'd like you to refer to the black binder, and  
15 specifically refer to the program log appearing at pages 5  
16 through 16 of Adams Exhibit 2.

17 MR. HUTTON: Has this been remarked as Exhibit 3?  
18 It's Exhibit 3.

19 JUDGE SIPPEL: What tab? Is there a tab here that  
20 we can flip to?

21 MR. HUTTON: It's the second tab. And following  
22 that, it's after the second blue separator.

23 BY MR. HUTTON:

24 Q It's the program log for Sunday, October 1, 1989.

25 JUDGE SIPPEL: Sunday, October 1, 1989.

1 MR. HUTTON: Yes.

2 JUDGE SIPPEL: Do you have that?

3 THE WITNESS: Yes.

4 JUDGE SIPPEL: I have it.

5 Mr. Cole?

6 MR. COLE: Yes, I do, Your Honor.

7 BY MR. HUTTON:

8 Q Looking in the first page of that, page five of  
9 that exhibit, there's a entry for a slot sequence and  
10 there's a handwritten notation, Food Stamps, Buckle Baby,  
11 and Adoption -- 90 seconds in total, and it's identified as  
12 PSA. You excluded that from your analysis of what was  
13 considered public service programming by the station?

14 A Yes.

15 Q Why did you make that determination to do that?

16 A Because the station, according to the logs this is  
17 a PSA, and therefore I classified it as a PSA and not a part  
18 of the classification public service programming.

19 Q So it had nothing to do with the length of the  
20 programming in question, it was just strictly whether it was  
21 listed as a PSA in the log?

22 A That's correct.

23 Q And you didn't go back to the issues and programs  
24 list to see if this was the type of programming that the  
25 station classified as public service programming --

1           MR. COLE: Objection. We're looking at the  
2 primary station document which classified the program in  
3 question as a PSA. Mr. Hutton is trying to recharacterize  
4 this and rewrite his log.

5           MR. HUTTON: Your Honor, I'm not trying to do  
6 anything. I'm trying to find out how the analysis was done  
7 and why certain types of programming was excluded from the  
8 analysis.

9           JUDGE SIPPEL: Okay. I'm going to sustain the  
10 objection. Rephrase your question so that it's absolutely  
11 clear that you're asking something different than appears in  
12 the log, or else make it clear what you're asking is in the  
13 log, exactly as you're asking the question.

14           BY MR. HUTTON:

15           Q     If the issues and quarterly programs list for this  
16 particular quarter had listed these, any of these items as,  
17 which are listed as PSA items in this log --

18           JUDGE SIPPEL: This is Sunday, October 1.

19           MR. HUTTON: Yes.

20           BY MR. HUTTON:

21           Q     If the issues and programs list had listed that as  
22 a public service programming of the station during that  
23 quarter, that wouldn't have made a difference to you, would  
24 it?

25           A     No.

1           Q     Can you tell me what your understanding is of the  
2     purpose of keeping a log such as this?

3           MR. COLE:  Objection.  Irrelevant.  Mr. Boothe's  
4     testimony as it is written here and as he's testified was  
5     simply that it describe.  He looked through the log, found  
6     the entries which the station made, and according to certain  
7     standards which are described in here, he made the cuts.  It  
8     doesn't make any difference what he understood these logs to  
9     be for.  These logs could have been in a completely  
10    different language incomprehensible to Mr. Boothe.  His job  
11    was simply to take the entries as they are placed on the  
12    lobs by Reading Broadcasting and to sort them out in a  
13    certain fashion, which he's done.

14           JUDGE SIPPEL:  I'm going to overrule the  
15    objection.  It's Cross-Examination.  We're not going to  
16    spend a lot of time on this.

17           Go ahead, Mr. Hutton.

18           MR. HUTTON:  I don't remember the exact question I  
19    had.

20           JUDGE SIPPEL:  Well what do you want to ask him?

21           BY MR. HUTTON:

22           Q     The question was that it would not have made a  
23    difference to you if the quarterly issues and programs list  
24    had listed these as public service announcements offering,  
25    as public service announcements aired by the station serving

1 the public interest during that quarter, correct?

2 A Are you asking in terms of how I'd have classified  
3 the program or the things?

4 Q Yes.

5 A No. What is listed here on the logs determined  
6 how I classified it, and how it was described in the issues  
7 and programs report would not have changed that.

8 Q Why was the determination made to take everything  
9 designated as a PSA and exclude it from your analysis?

10 A Because PSAs are not programs. My analysis was  
11 only to distinguish what was considered a program, or rather  
12 what was not identified as some other type of program, and  
13 to leave what was otherwise not identifiable as something  
14 other than a program.

15 Q You're saying it has nothing --

16 JUDGE SIPPEL: I'm not sure that I understand.  
17 I'm sorry, I don't mean to interject, but as I understand  
18 it, you were making a cut or expected to make a cut between  
19 PSAs and programming and you were to record the programming  
20 without counting PSAs in programming?

21 THE WITNESS: That's correct.

22 JUDGE SIPPEL: That's basically what you're  
23 telling

24 THE WITNESS: Yes.

25 BY MR. HUTTON:

1 Q Who asked you to do that?

2 A Mr. Cole and Mr. Bechtel.

3 Q Do you know why PSAs, why they asked you to  
4 exclude PSAs?

5 A I don't know.

6 Q Did it have to do with the length of the  
7 programming in question?

8 MR. COLE: Objection. He just said he doesn't  
9 know.

10 JUDGE SIPPEL: He doesn't know.

11 He was instructed to do A, B, and C, and he sat  
12 down and he did A, B, and C.

13 MR. HUTTON: Okay.

14 JUDGE SIPPEL: He wasn't in on the strategy  
15 session.

16 BY MR. HUTTON:

17 Q But you do have some understanding of historical  
18 Commission practices, is that right?

19 A Only in the limited capacity that I reflected. I  
20 mean I read that one case and I had a couple of  
21 conversations with Mr. Cole and Mr. Bechtel.

22 Q I'd like to show the witness a copy of an FCC  
23 report and order. It's entitled In the Matter of the  
24 Revision of Programming and Commercialization Policies  
25 Ascertaining the Requirements and Program Log Requirements

Heritage Reporting Corporation  
(202) 628-4888

1 for Commercial Television Stations. It's reported at 98 FCC  
2 2nd 1076.

3 I want to refer him to Footnote 54.

4 JUDGE SIPPEL: 98 FCC 2nd, what's the page again?

5 MR. HUTTON: 98 FCC 2nd 1076.

6 JUDGE SIPPEL: And you're showing him --

7 MR. HUTTON: I'm showing him specifically Footnote  
8 54 which appears, I believe, on page 1087.

9 JUDGE SIPPEL: Do you want to show a copy to Mr.  
10 Cole? Do you have a copy for me, too?

11 MR. HUTTON: I don't. I can show it to you.

12 JUDGE SIPPEL: Let's go off the record a minute.

13 (Pause)

14 JUDGE SIPPEL: On the record.

15 You're going to show this to the witness and then  
16 you're going to ask him questions about it?

17 MR. HUTTON: Just briefly, Your Honor.

18 JUDGE SIPPEL: Mr. Cole?

19 MR. COLE: Your Honor, I don't want to belabor  
20 anything because I think we'll probably get through this. I  
21 don't object faster than I do object. But given the  
22 limitations of Mr. Boothe's testimony, I don't see where  
23 we're going with any questions about that footnote or any  
24 other Commission --

25 But if Your Honor wants to permit the questioning

1 I'm not going to make a big fuss about it.

2 JUDGE SIPPEL: Well, he said he read one case.  
3 You can ask him if he's ever read this case and footnote.  
4 If he says no, then that's the end of this.

5 MR. HUTTON: Okay.

6 BY MR. HUTTON:

7 Q Mr. Boothe referring now to Footnote 54 appearing  
8 at the top of the page, do you recall ever reading that?

9 A No, don't.

10 JUDGE SIPPEL: Okay. That's it. That's your  
11 answer.

12 BY MR. HUTTON:

13 Q Mr. Boothe, did you ever do an analysis of the  
14 program logs that included PSAs in the analysis?

15 A No.

16 Q Referring back to the log, the log for October 1,  
17 1989, the references to PSA appear on the right hand side of  
18 each page, is that correct?

19 A Yes.

20 Q And can you tell me what the other abbreviations  
21 mean?

22 A From --

23 Q Well, let's start at the top of the first page for  
24 October 1, 1989.

25 A VSI, as I understand it would be representating



1 [sic] visual station identification.

2 NET refers to network.

3 C-8, the eight I'm assuming refers to the number  
4 of C, C meaning commercial.

5 NF as near as I can tell refers to news feature,  
6 but I had no clear definition on that.

7 PSA, public service announcement.

8 Q Okay.

9 A Down near the bottom PI which would stand for per  
10 inquiry.

11 Q Okay.

12 JUDGE SIPPEL: What exhibit page number are you  
13 on?

14 THE WITNESS: Page five.

15 JUDGE SIPPEL: Thank you.

16 BY MR. HUTTON:

17 Q Now let's move on to page 14. There's an entry  
18 near the middle of the page to the right of the stamp where  
19 it says official log, there's an entry for In Touch, Cut  
20 One, Making Your Marriage Work, and that's classified as IT-  
21 48. Do you know what that means?

22 A I would assume that refers to In Touch.

23 Q Did you count that program in your analysis?

24 A No, I did not.

25 Q Why not?

1           A     Because In Touch is consistently referred to as a  
2     PSA in the later logs beginning with I believe January or  
3     perhaps late December of '89, and throughout the remainder  
4     of the license term.

5           Q     Can you tell me what the purpose of the station's  
6     logs is?

7           A     No, I can't.

8           Q     Can you tell me what the purpose is of these  
9     different abbreviations that appear in the log?

10          MR. COLE:  Objection.  How is he going to know  
11     that?

12          JUDGE SIPPET:  He didn't prepare the logs.

13          MR. HUTTON:  He didn't prepare them, but he's  
14     offered an interpretation of the logs and an analysis based  
15     on his interpretation.

16          JUDGE SIPPET:  Well, I'm going to sustain the  
17     objection.  You can ask him did he receive any instruction  
18     as to what such and such means.  But he was given a task to  
19     do an only chore.  Take this information and put it here,  
20     take that information and put it there.

21          MR. HUTTON:  Your Honor, I think it goes beyond  
22     that.  I think if you refer back to Appendix B there is  
23     substantial narrative about interpretations of historic  
24     Commission practice.  In Appendix B, page three, there are  
25     various interpretations offered and explanations why things

1 have been interpreted a particular way.

2 JUDGE SIPPEL: Give me an example so I'm sure I'm  
3 on the right page with you.

4 MR. HUTTON: All right.

5 JUDGE SIPPEL: Personal Money Machine?

6 MR. HUTTON: Let's go to the next page, page four,  
7 "Widget was a syndicated children's entertainment program.  
8 This was listed in some quarterly lists as including  
9 programming of interest to children. No information  
10 provided by RBI suggests that this program included the  
11 discussion of news or public affairs or was otherwise non-  
12 entertainment in nature. See eg Attachment 3 hereto," and  
13 he refers to a copy, an excerpt from a quarterly issues and  
14 programs list.

15 "Likewise, legislative report" --

16 JUDGE SIPPEL: Let's take it one at a time. Ask  
17 the witness, okay, is this yours? Did you prepare that  
18 description with respect to Widget?

19 THE WITNESS: Yes.

20 JUDGE SIPPEL: How did you go about doing it?  
21 What information did you consult?

22 THE WITNESS: I consulted the quarterly reports,  
23 the issues and programs reports, which describe the program  
24 and what information there was from, provided through  
25 discovery from Reading as to the nature and content of the

1 programming.

2 JUDGE SIPPEL: How do you conclude that "no  
3 information provided by RBI suggests that this program  
4 included the discussion of news or public affairs or was  
5 otherwise non-entertainment in nature"?

6 THE WITNESS: Because I read the information  
7 provided by RBI.

8 JUDGE SIPPEL: What would that consist of?

9 THE WITNESS: Primarily the quarterly reports and  
10 some pieces of documentation that they included in a  
11 description of some of their programs.

12 JUDGE SIPPEL: Did you have a working definition  
13 of news or public affairs or non-entertainment to determine  
14 whether or not a program fit those categories?

15 THE WITNESS: No, I did not.

16 JUDGE SIPPEL: No working definition. So how  
17 would you know that something was public affairs as opposed  
18 to news? How would you make that cut?

19 THE WITNESS: I was not distinguishing between  
20 news and public affairs. I was distinguishing between  
21 things that fit into any of those categories that would be  
22 non-entertainment, or things that would not.

23 JUDGE SIPPEL: So you were looking for  
24 entertainment, and then anything that didn't fit into the  
25 entertainment category would be non-entertainment.

1 THE WITNESS: The reverse.

2 JUDGE SIPPEL: Tell me what you were doing.

3 THE WITNESS: If I read the description and  
4 materials provided by Reading to describe the program and if  
5 I found something in the description to reflect a non-  
6 entertainment interest such as news or public affairs, then  
7 I would characterize it as non-entertainment, a non-  
8 entertainment value.

9 To the extent that I didn't find anything of that  
10 nature, then I would classify it as, I would not classify it  
11 as non-entertainment.

12 JUDGE SIPPEL: And non-entertainment would consist  
13 of news, it would consist of broadcasting programs regarding  
14 public affairs, is that correct?

15 THE WITNESS: Correct.

16 JUDGE SIPPEL: But it would not include -- What  
17 about PSAs? It would not include PSAs? I know we talked  
18 about that earlier.

19 THE WITNESS: PSAs were not part of this analysis.  
20 Because this is an analysis of what had already been  
21 determined as --

22 JUDGE SIPPEL: Programming.

23 THE WITNESS: Right.

24 JUDGE SIPPEL: Did you make the determination of  
25 what was programming yourself, or did someone assist you on

1     that?

2                 THE WITNESS: I used the guidelines that Mr. Cole  
3     and Mr. Bechtel had given to me and sifted through the logs  
4     to determine what was or was not fitting within the  
5     definition of programming that I was given.

6                 JUDGE SIPPEL: Were these guidelines given to you  
7     orally or did you get something in writing?

8                 THE WITNESS: I'm fairly sure that they were oral  
9     until the point we started preparing the exhibits, and then  
10    I prepared the written description at the beginning of  
11    Appendix A, and that was an expression of what I was  
12    instructed to categorize as programs. In other words, that  
13    which is not readily identifiable or identified on the logs  
14    as coming from the networks or some other type of  
15    programming.

16                JUDGE SIPPEL: Okay.

17                Did you want to follow up on this, Mr. Hutton? It  
18    seems to me that he fairly described the criteria he was  
19    using to make the cut. You're entitled to know. Obviously  
20    you're entitled to know.

21                MR. HUTTON: Yeah, and I, given that he apparently  
22    exercised some judgment based on a review of the quarterly  
23    issues and programs list as to how to classify things, I'm  
24    trying to probe as to what determined the judgment to  
25    exclude PSAs.

1           MR. COLE: Your Honor, what Mr. Boothe is  
2     testifying to is that he made the cut identifying what were  
3     programs. That is, if it wasn't a network, it wasn't  
4     identified in the log as a network show, a PSA, a  
5     commercial, or any of these other categories of materials,  
6     it fell into the big category of programs. Once had  
7     identified those programs, he made a list of those programs  
8     and then went through to try to identify from the quarterly  
9     reports and so forth what those programs were. Were they  
10    entertainment, were they not entertainment, etc.

11           The question that Mr. Hutton keeps trying to get  
12    to doesn't relate to his review of the quarterly reports  
13    because by the time he started looking at the quarterly  
14    reports the definitions and so forth, he'd already made the  
15    determination -- He wasn't worried about PSAs. PSAs weren't  
16    part of the equation at that point.

17           JUDGE SIPPEL: They were eliminated up front.

18           MR. COLE: They were eliminated up front.

19           JUDGE SIPPEL: I want to be fair to you, Mr.  
20    Hutton. You're going after his methodology and you're  
21    entitled to do that, but what further cut do you want to  
22    make?

23           MR. HUTTON: Well, let me follow up on something  
24    you stated in response to the Judge.

25           BY MR. HUTTON:

1 Q I thought I understood you to say that you didn't  
2 distinguish between news and public affairs programming?

3 A In terms of analysis of the logs?

4 Q Right.

5 A Programming and non-programming? No. I did not.

6 Q Now refer to Adams Exhibit 3, page 2A for me.

7 JUDGE SIPPEL: This is the black book now, right?

8 MR. HUTTON: Yes.

9 JUDGE SIPPEL: What page?

10 MR. HUTTON: Page 2A.

11 THE WITNESS: I have it.

12 BY MR. HUTTON:

13 Q Isn't there a distinction drawn there between news  
14 programs and public affairs programs?

15 A Yes, there is.

16 Q Under Item B?

17 A Yes, there is. After having made the cut of  
18 programming or non-programming, then I began to put them  
19 into categories of news, public affairs, and other non-  
20 entertainment programming.

21 Q So what you seem to be saying is that the  
22 quarterly issues and programs lists were useful in  
23 determining what type of programming a program was, if it  
24 was considered a program; but it had no bearing on the  
25 question of whether a PSA should be considered a program, is



1     that right?

2           A     That is correct.

3           Q     Mr. Boothe, the case that you reviewed, do you  
4     know if that included a list of the types of programming  
5     that the Commission considers relevant in a comparative  
6     renewal case?

7           A     No, I'm not sure if it did or not.

8           JUDGE SIPPEL:   Do we know what that authority was?  
9     He talked about a case.   He thought it was a Bechtel case.

10          MR. HUTTON:   As I understood he, he thought it was  
11     either the Bechtel vs. FCC case or the case that made that  
12     channel available for application.   Is that correct?

13          THE WITNESS:   As I understood the authorities that  
14     I looked at were a comparative hearing and an appeal or a  
15     case which resulted from the result of that comparative  
16     decision.   Comparative application --

17          JUDGE SIPPEL:   Did Mr. Cole or Mr. Bechtel give  
18     you the case to read?

19          THE WITNESS:   They gave me the case to scan, but  
20     not as a result of study.

21          JUDGE SIPPEL:   I take it it was given to you with  
22     some form of guidance?   It was to help you and assist you in  
23     what you did here?

24          THE WITNESS:   Initially it was given to me as just  
25     as an introduction to the comparative renewal process, just

1       so it had something to look at to see --

2               JUDGE SIPPEL:   As background.

3               THE WITNESS:   Right, background just to see what a  
4       comparative renewal hearing was.

5               JUDGE SIPPEL:   Were you to look at the case for  
6       purposes of criteria or methodology in terms of the work  
7       that you did here?

8               THE WITNESS:   No, sir.

9               JUDGE SIPPEL:   And you didn't receive any type of  
10       instruction, in other words instructions like look carefully  
11       at pages so and so and so and so and I want you to be sure  
12       you understand what they're saying about programming.

13              THE WITNESS:   No.

14              JUDGE SIPPEL:   All right.

15              BY MR. HUTTON:

16              Q       But at least in the case of the In Touch  
17       programming you made a judgment call that that programming  
18       should be classified as PSA programming, notwithstanding the  
19       log entry that didn't say PSA, is that correct?

20              A       No, it is not.

21              Q       Refer again to page ten of that Adams Exhibit 3.  
22       Again, to the right of --

23              JUDGE SIPPEL:   Be sure the witness has the page.

24              MR. HUTTON:   Page ten.   For Sunday, October 1,  
25       1989.

1 THE WITNESS: Yes.

2 MR. HUTTON: From 10:00 a.m. to 12:00 p.m.

3 THE WITNESS: Yes.

4 BY MR. HUTTON:

5 Q There's a stamp on the page that indicates  
6 Official Log. To the right of that stamp there's an entry  
7 for In Touch, Cut One, Making Your Marriage Work. And I  
8 asked you if you calculated that as a program for purposes  
9 of your analysis. Do you remember that?

10 A Yes.

11 Q You testified that you did not include that as a  
12 program for purposes of your analysis. Is that correct?

13 A Yes, it is.

14 Q However, you testified, I believe, that you  
15 classified it as a PSA notwithstanding the log entry that  
16 appears there, correct?

17 A That is correct.

18 Q So you did make a judgment call about how to  
19 classify that program notwithstanding the abbreviation that  
20 appears in the log entry, correct?

21 A No, sir. I don't consider it a judgment call  
22 because I based it on the log entries that I found more  
23 consistently throughout the license term which consistently,  
24 as I stated earlier, beginning I believe in January of 1990,  
25 referred to the In Touch programming as PSAs. I did not

1 consider that an act of my judgment, but rather the judgment  
2 of whoever at the station prepared the log.

3 Q But if you refer back to your definition of what  
4 is a program in Appendix A --

5 JUDGE SIPPEL: You're back on Exhibit 2, Appendix  
6 A.

7 MR. HUTTON: Appendix A. In the last paragraph of  
8 that page he explains his definition of program.

9 JUDGE SIPPEL: If you want to read it into the  
10 record very briefly so we're sure we're on the same page  
11 with you.

12 MR. HUTTON: It says, "For purposes of Adams'  
13 analysis, an entry in the log is determined," etc.

14 BY MR. HUTTON:

15 Q Do you see that, Mr. Boothe?

16 A Yes, I do.

17 Q Under that paragraph the In Touch program should  
18 be classified as a program, isn't that right?

19 A No, it should not.

20 Q Can you tell me where the, based on the paragraph  
21 in Appendix A, how you made that determination.

22 A Because based on the log entries which  
23 consistently referred to the In Touch programming as PSAs.

24 Q Let's move back to page 12 of that log. Starting  
25 at 2:00 p.m. There's another In Touch program called The

1 Environment, Cut Two. Three minutes in length and it's  
2 classified as IT-49. Do you see that entry?

3 A Yes, I do.

4 Q How did you classify that program?

5 A As a PSA.

6 Q So the entry on page ten isn't just a one-time  
7 mistake, is it?

8 MR. COLE: Objection. He didn't say it was a  
9 mistake at all.

10 JUDGE SIPPEL: Sustained.

11 BY MR. HUTTON:

12 Q It wasn't a one-time incident was it?

13 A No, it was not.

14 JUDGE SIPPEL: Is that the In Touch reference on  
15 page 10? Is that what we're talking about?

16 THE WITNESS: That's what I'm talking about.

17 MR. HUTTON: Yeah.

18 BY MR. HUTTON:

19 Q There's another In Touch entry on page 14 --

20 A That's what I thought I was looking at.

21 JUDGE SIPPEL: You've got to -- This record has to  
22 be clear. I know it's very clear in your own head --

23 MR. HUTTON: I'm sorry.

24 JUDGE SIPPEL: You're referring the witness to  
25 Adams Exhibit 3 at what page?

1 MR. HUTTON: At page 14.

2 JUDGE SIPPEL: And previously you had asked him  
3 about page 10 of that exhibit?

4 MR. HUTTON: Page 10 and then page 12 we've been  
5 through.

6 JUDGE SIPPEL: Now you're up to page 14.

7 MR. HUTTON: Right.

8 BY MR. HUTTON:

9 Q There's another entry in the middle of the page  
10 for In Touch, Making Your Marriage Work, and I'm asking the  
11 witness if he classified that as a program or as a PSA.

12 A What is the question?

13 JUDGE SIPPEL: My notes say that we've been on  
14 this before. Is this a repeat of the same line of  
15 questions, or -- I have a note here that we talked about  
16 this.

17 MR. HUTTON: It's a different entry on the same  
18 day.

19 JUDGE SIPPEL: I'll let you go.

20 BY MR. HUTTON:

21 Q Again, referring to the In Touch entry on page 14,  
22 did you classify that as a PSA or as a program?

23 A As a PSA.

24 Q Turning to page 15, there's another entry for In  
25 Touch, The Environment. And I'd like you to tell me whether

1     you classified that as a PSA or as a program.

2             A     As a PSA.

3             MR. COLE: Your Honor, if this will help  
4     abbreviate this, we're perfectly prepared to stipulate, I  
5     believe, subject to the witness' concurrence, that any entry  
6     during the period of August of 1989 through December of 1989  
7     which Mr. Hutton can find an In Touch program listed with an  
8     IT description in the far right hand column of the log, Mr.  
9     Boothe treated it as a PSA for the reasons he has previously  
10    testified to.

11            MR. HUTTON: All right.

12            BY MR. HUTTON:

13            Q     Again, your classification of a program, your  
14     classification of material as either a program or a PSA had  
15     nothing to do with the length of the material, is that  
16     right?

17            A     That is correct.

18            Q     Referring to page 2A of that exhibit --

19            A     Which exhibit?

20            Q     Adams Exhibit 3.

21            A     All right. I have it.

22            Q     Have you ever done a tabulation of what the total  
23     non-entertainment programming would be if you had included  
24     PSAs in that tabulation?

25            A     No, I have not.

1 JUDGE SIPPEL: Are you going to another area or  
2 another line?

3 MR. HUTTON: Very soon. I just want to cover one  
4 more thing, I think.

5 BY MR. HUTTON:

6 Q On page 12 of Adams Exhibit 3, there's an entry at  
7 around 1554 for Medical Minute, Cut 4, and it's classified  
8 as MM-5. Do you see that entry?

9 A Yes, I do.

10 Q How did you classify that entry?

11 A I classified that as a PSA.

12 Q What was that determination based on?

13 A It was based on the consistent log entries  
14 throughout the remainder of the license term which listed  
15 Medical Minute as a PSA.

16 Q I'd like you to refer back to Adams Exhibit 2,  
17 your introductory statement. It appears after the first tab  
18 in the green binder.

19 A I have it.

20 Q In the second paragraph of your introductory  
21 statement you indicate that you selected, you identified a  
22 composite week based on an FCC decision or public notice  
23 from 1978. How did you make the determination to use that  
24 year?

25 A I did not. That determination was given to me by



1 Mr. Cole.

2 Q And do you know how he made that determination?

3 A No, I do not.

4 Q Did he ever ask you to do an analysis for another  
5 year?

6 A For another year other than what?

7 Q Well, did he ask you to do a similar analysis  
8 based on an FCC public notice for another year?

9 A No, he did not.

10 Q Turning to the next page, it appears that for each  
11 composite week you've got one date, October 1, in one year;  
12 and then the rest of the week you've got in a subsequent  
13 year. Is that correct?

14 A Yes.

15 Q Do you know why that is?

16 A Because the day October 1st precedes the other  
17 dates which would come in the subsequent year.

18 Q Do you know why the dates aren't all within one  
19 calendar year?

20 A My understanding is because the license term does  
21 not run by the calendar year but rather by, I believe,  
22 August 1st to July 31st.

23 JUDGE SIPPEL: Mr. Hutton, it's a little after  
24 12:00 o'clock. I take it you're going to have a good more  
25 to do with this witness?

1 MR. HUTTON: Not a lot. I think we can finish up  
2 by lunch time.

3 JUDGE SIPPEL: Well, 12:00 o'clock is lunch time.  
4 Let's go off the record.

5 (Discussion off the record)

6 JUDGE SIPPEL: On the record.

7 BY MR. HUTTON:

8 Q Mr. Boothe, I'd like to refer back to the black  
9 binder, Exhibit 3. After the program logs for each date  
10 there are collections of, well, let's use an example here.

11 On page 17 is a summary of Headlines from the  
12 Reading Eagle.

13 JUDGE SIPPEL: Let's look at it. Let's get to it.  
14 Do you have the page, Mr. Boothe?

15 THE WITNESS: Yes, I do.

16 BY MR. HUTTON:

17 Q Exhibit 3, page 17 entitled Headlines from the  
18 Reading Eagle, followed by clippings from the Reading Eagle  
19 appearing on pages 18 through 24 of Adams Exhibit 3. Is  
20 that correct?

21 A You said 18 through 24?

22 Q Yes.

23 A That's correct. That is what I have.

24 Q And there are similar items appearing for each of  
25 your daily analyses, is that correct?

1           A     That is correct.

2           Q     What is the purpose of your offering this material  
3     for inclusion in your exhibit?

4           A     This material is offered as illustration of the  
5     events going on in the Reading area that appeared to be of  
6     significance.

7           Q     Significance to whom?

8           A     To the residents of the Reading area.

9           Q     Isn't that based on the editorial judgment of the  
10    Reading Eagle?

11          A     I'm not sure I understand what you're asking.

12          Q     Well, did you go out and survey residents as to  
13    what they were interested in?

14          A     No, I did not.

15          Q     You went to the newspaper archives and you pulled  
16    copies of the Reading Eagle from a particular time period,  
17    is that correct?

18          A     No, sir.  Actually I did not do that.

19                JUDGE SIPPEL:  Why don't you ask him what he did.

20                BY MR. HUTTON:

21          Q     What did you do to collect this material?

22          A     We had counsel in Reading, in the Reading area at  
23    the behest of Bechtel & Cole looked up and provided these  
24    excerpts from the Reading Eagle, and then I reviewed them  
25    for noteworthy and relevant headlines to include in the

1 listing Headlines from the Reading Eagle.

2 Q Did they send you a copy of the complete newspaper  
3 for those days?

4 A No, they did not.

5 Q What did they send you?

6 A They sent me copies that appeared to be from  
7 microfilm of various pages, generally the front page and  
8 like front page of the second or third section or just other  
9 pages in the paper.

10 Q So they made a determination as to what to copy  
11 from the newspaper, correct?

12 A Yes, they did.

13 Q And the newspaper had made a determination as to  
14 what to publish in the newspaper and where to place those  
15 stories, is that correct?

16 A Yes, it is.

17 JUDGE SIPPEL: Who is the they that did the  
18 selecting again?

19 THE WITNESS: I believe it was Mr. Danofrio [ph].  
20 Counsel in Reading, in the Reading area. He was working at  
21 the request of Bechtel & Cole.

22 BY MR. HUTTON:

23 Q From the material that Mr. Danofrio sent, you made  
24 further cut as to what was newsworthy? Is that correct?

25 A Well I don't know if you'd call it newsworthy.

1 Just the headlines that seemed to be of significance to the  
2 Reading area in general.

3 Q How did you make the judgment as to what to  
4 include and what to exclude from what was sent to you?

5 A I basically looked at the reports and decided what  
6 I would think was important if the reports were originating  
7 from my area.

8 Q What's the purpose for including these, again, as  
9 an attachment to your analysis?

10 A As an illustration of events of significance  
11 happening in or affecting the Reading area.

12 Q So if the station had someone go on the air each  
13 day and read the Reading newspaper on the air out loud, and  
14 had classified that as a program, under your definition,  
15 rather than a PSA, that would have been included as public  
16 service programming --

17 MR. COLE: Objection.

18 MR. HUTTON: -- under your analysis. Is that  
19 correct?

20 JUDGE SIPPEL: What is the objection?

21 MR. COLE: I fail to see what relevance that  
22 question has. If anything, he's asking him to speculate  
23 about circumstances which did not occur, and I just, it's  
24 fanciful. It's not an evidentiary question.

25 JUDGE SIPPEL: I'll permit the question for Cross-

1 Examination purposes.

2 BY MR. HUTTON:

3 Q Did you understand the question?

4 A Can you say it one more time?

5 Q Sure.

6 Suppose the station had had someone go on the air  
7 every day and read the newspaper out loud on the air as part  
8 of its programming schedule. If they had not listed that as  
9 a PSA in their log then that would pass under your analysis,  
10 would it not, as public service programming, or public  
11 affairs, or news programming by the station?

12 A Assuming they didn't list it as commercial or per  
13 inquiry or any other identifiable types then yes, in my  
14 analysis it would have appeared as programming. And  
15 assuming they read the headlines, I would most likely, in  
16 the further analysis of what type of programming, selected  
17 it as news programming.

18 Q Do you know if -- Did you make any determination  
19 in doing your analysis of what to include and what not to  
20 include as to what might be appropriate for a television  
21 station as opposed to a newspaper?

22 A What to include in what?

23 Q In your summaries of news clippings.

24 A The clippings from the Reading Eagle?

25 Q Right.

1 A No, that aspect didn't factor in.

2 Q Do you know if Mr. Danofrio made that judgment?

3 A I have no idea.

4 Q Presumably the Reading Eagle didn't make that  
5 judgment, correct?

6 A Again, I have no idea.

7 Q To your knowledge does the FCC require stations to  
8 air news programming?

9 MR. COLE: Objection. Relevance.

10 MR. HUTTON: It's relevant because he's done an  
11 entire analysis of what purports to be the station's news  
12 and public affairs programming throughout the license term.

13 MR. COLE: And the basis of the methodology he's  
14 utilized to undertake that analysis set forth here, does  
15 not, as I understand the analysis, have anything to do with  
16 any particular FCC requirements or lack thereof. And Mr.  
17 Boothe's knowledge, familiarity or lack of knowledge or lack  
18 of familiarity with any FCC rules, policies, requirements,  
19 etc., is irrelevant.

20 JUDGE SIPPEL: I'll sustain the objection on the  
21 basis that the witness already described what he's been told  
22 to do and what his background is, he's not qualified to  
23 answer that question.

24 BY MR. HUTTON:

25 Q I'd like you to refer to Adams Exhibit 11.

1 JUDGE SIPPEL: Let's go off the record.

2 (Pause)

3 JUDGE SIPPEL: On the record.

4 Do you have a copy of Adams Exhibit 11 now?

5 THE WITNESS: Yes, I do.

6 JUDGE SIPPEL: Go ahead, Mr. Hutton.

7 BY MR. HUTTON:

8 Q Referring to the broadcast channels listed on page  
9 2 of that exhibit, I'd like to ask you if you ever did an  
10 analysis of the news or public affairs or other non-  
11 entertainment program of any of the stations listed there  
12 other than WTVE.

13 A No, I did not.

14 Q Do you have any knowledge of the availability of  
15 news and public affairs or other programming, other non-  
16 entertainment programming available to residents in the  
17 Reading area from sources other than WTVE?

18 A No, I do not.

19 MR. HUTTON: I have nothing further, Your Honor.

20 JUDGE SIPPEL: Thank you very much.

21 MR. COLE: Your Honor, one question I have which  
22 is more clarification.

23 REDIRECT EXAMINATION

24 BY MR. COLE:

25 Q Mr. Boothe, during Cross-Examination by Mr. Hutton



1 you referred to a comparative renewal case that you had  
2 read. Would it refresh your recollection -- strike that.

3 Did that case involve a television station in  
4 Chicago?

5 MR. HUTTON: Objection, leading.

6 JUDGE SIPPEL: Well, for the purposes of -- I'll  
7 permit the question. Overruled.

8 BY MR. COLE:

9 Q Do you recall?

10 A Yes, I believe it did.

11 MR. COLE: What I'm trying to get at, I think you  
12 understand, is to identify the case is not Bechtel vs. FCC,  
13 but a different case before the comparative renewal case --

14 JUDGE SIPPEL: Do you want to tell us what the  
15 case was?

16 MR. COLE: I believe it was Monroe Communications  
17 Corporation vs. the FCC.

18 JUDGE SIPPEL: Video 44?

19 MR. COLE: It was Video 44, FCC, Monroe  
20 Communications at the Court of Appeals level.

21 JUDGE SIPPEL: All right.

22 MR. COLE: I have nothing further than that.

23 JUDGE SIPPEL: Anything further?

24 MR. HUTTON: No.

25 JUDGE SIPPEL: I have nothing further of this

1 witness.

2 You're excused, Mr. Boothe. Thank you very much.

3 (Witness excused)

4 JUDGE SIPPEL: Before we go off the record, I want  
5 to -- Well, we'll go off the record and do it and then come  
6 back on again, but I want to review my exhibit log and be  
7 sure that there's nothing outstanding as far as my records  
8 go. I want to be sure that's clear.

9 I also, I hate to do this, but I'm going to come  
10 back to these dates that, the motions dates that I've set.  
11 I really need to make a change so that I have what I feel is  
12 the amount of time to address these, and within my schedule.

13 I had, on the rebuttal evidence, whatever the  
14 dates I had, I have them in my calendar some place, but I  
15 want to change those dates to January 21, which is a Friday,  
16 and I'm going to ask that they come in at 2:00 p.m. on a  
17 Friday so I'm sure that I have everything I need to consider  
18 it. And no whatever the opposition is, it would be Friday,  
19 January 28th, also at 2:00 p.m.

20 I say 2:00 p.m. that's the time that by 2:00 p.m.  
21 I want to have the copies. Whether or not you file them at  
22 the end of the day with the Commission, that's fine with me.

23 And on the Exhibit 17 motion, I'm going to move  
24 those back a little bit too, to Friday, February 4th, same  
25 thing, 2:00 p.m.; and February 11th on the opposition, also

1 at 2:00 p.m.

2 I guess actually on that February 4 date, I don't  
3 need to get it at 2:00 p.m. I'm not going to be able to  
4 really look at it intelligently until I speak to Mr. Cole  
5 anyway, but I do want to get the rebuttal motions in at 2:00  
6 p.m. I look at those differently.

7 I'll get an order out on that.

8 Let me go off the record for just a minute.

9 (Pause)

10 JUDGE SIPPEL: On the record.

11 We're in recess until January 19th at 10:00 a.m.  
12 for which I will issue an order. That will be the  
13 conference on the phase two discovery, more of a status call  
14 on phase two. And subject, of course, to Mr. Shook's health  
15 and availability, because I need him.

16 Okay. We're in recess. Thank you, gentlemen.

17 (Whereupon, at 12:23 p.m. the hearing was recessed  
18 to reconvene on Wednesday, January 19, 2000 at 10:00 a.m.)

19 //

20 //

21 //

22 //

23 //

24 //

25 //

**REPORTER'S CERTIFICATE**

FCC DOCKET NO.: 99-153

CASE TITLE: In Re: Reading Broadcasting

HEARING DATE: January 13, 2000

LOCATION: Washington, D.C.

I hereby certify that the proceedings and evidence are contained fully and accurately on the tapes and notes reported by me at the hearing in the above case before the Federal Communications Commission.

Date:

1-13-00

Sharon Bellamy

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**TRANSCRIBER'S CERTIFICATE**

I hereby certify that the proceedings and evidence were fully and accurately transcribed from the tapes and notes provided by the above named reporter in the above case before the Federal Communications Commission.

Date:

1-25-00

Marcia Thurman

Marcia Thurman  
Official Transcriber  
Heritage Reporting Corporation

**PROOFREADER'S CERTIFICATE**

I hereby certify that the transcript of the proceedings and evidence in the above referenced case that was held before the Federal Communications Commission was proofread on the date specified below.

Date:

1-27-00

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